(2)

SUPREME COURT, U.S.
FILED
SEP 21 1994
OFFICE OF THE CLERK

No. 94-139

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

GENERAL MOTORS CORPORATION,
Petitioner,
v.

LINDA JACKSON, individually and as next friend and natural guardian of her minor daughter, AMANDA JACKSON, and TERRY JACKSON,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

BRIEF FOR RESPONDENTS IN OPPOSITION

Of Counsel:
HICKMAN, RAYBURN, GOZA & GORE
Attorneys at Law
Post Office Drawer 668
Oxford, MS 38655
(601) 234-4000

DAVID D. O'DONNELL
S. T. RAYBURN
S. DUKE GOZA
H. SCOT SPRAGINS
Post Office Drawer 668
Oxford, MS 38655

DAVID G. HILL *
MAURIE L. WHITE
LAW OFFICE OF DAVID G. HILL
Post Office Box 429
Oxford, MS 38655
(601) 234-4315

J. MAX KILPATRICK
Post Office Drawer 520
Philadelphia, MS 39350

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether the Mississippi courts failed to provide "meaningful" review of the judgment in this case.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
STATEMENT	1
ARGUMENT	7
CONCLUSION	13

TABLE OF AUTHORITIES

Cases	Page
Fitzner Pontiac-Buick-Cadillac, Inc. v. Smith, 523 So. 2d 324 (Miss. 1988)	9
Honda Motor Co., Ltd. v. Oberg, 114 S. Ct. 2331 (1994)	10, 11
Jones v. Shaffer, 573 So. 2d 740 (Miss. 1990)	9
NLRB v. Hendricks County Rural Elec. Corp., 454 U.S. 170 (1981)	10
United States v. Johnston, 268 U.S. 220 (1925)	10
Wilmoth v. Peaster Tractor Co., 544 So. 2d 1384 (Miss. 1989)	9
Other Authorities	
28 U.S.C. § 1257	8
S. Ct. R. 14.1(h)	8
R. Stern, E. Gressman, S. Shapiro, & K. Geller, *Supreme Court Practice* (7th ed. 1993)	8, 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

No. 94-139

GENERAL MOTORS CORPORATION,
Petitioner,

v.

LINDA JACKSON, individually and as next friend and natural guardian of her minor daughter, AMANDA JACKSON, and TERRY JACKSON,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Mississippi

---

BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT

This case arises out of a motor vehicle accident occurring almost ten years ago in Leake County, Mississippi. On December 14, 1984, respondent Linda Jackson and her then six-week-old daughter, Amanda, were driving to a doctor's appointment in a vehicle (a GMC Jimmy) manufactured by petitioner General Motors. As they were proceeding westward at approximately 50 to 60 miles per hour, Linda Jackson felt a bump at the left rear end of the vehicle and, almost immediately, lost control of it. T.675-76.[1] After veering across the roadway, the vehicle flipped over several times, ultimately coming to rest on the right shoulder of the roadway near a pond. T.580.

---

[1] "T" refers to the transcript of proceedings in the Circuit Court.

Both Linda Jackson and Amanda Jackson were seriously injured in the accident. Linda Jackson suffered permanent damage to her left hip (requiring the implant of an artificial hip joint), T.1173-83, as well as damage to the right parietal occipital tertiary area of her brain. T.562. She is now permanently clinically depressed. T.558. Amanda Jackson is severely and permanently brain-damaged, with an I.Q. below the 35-45 minimum test level. T.1236, 530-31, 1052, 1056. She has permanently impaired vision and a severe speech impediment. T.1237, 1109, 543, 1062. She requires, and will continue to require for the remainder of her life, a shunt from her head into her stomach. T.1237.

Respondents brought suit against petitioner in 1985, alleging that a faulty left rear axle on the Jimmy had broken and caused it to swerve out-of-control.[2] It was agreed among the parties that the axle had fractured, so the principal point of dispute at trial was whether it had broken before the vehicle went out of control or afterwards. Respondents contended that the fracture occurred beforehand, and thus was the cause of the accident; petitioner contended that it occurred subsequently, and thus was an effect of the accident.

The evidence introduced by respondents indicated that the left rear axle shaft had initially been rejected as defective at the time of manufacture. T.941.[3] In accordance with its policy at that time, petitioner had then reprocessed (or "retoccoed") the shaft. After the reprocessing, however, it did not subject the shaft to ultrasound inspection

---

[2] Respondent Terry Jackson—Linda's husband and Amanda's father—was also a plaintiff in the suit. Grenada Sales Company, Inc., the dealer from which the GMC Jimmy was purchased, was a defendant. Judgment was entered in favor of Grenada Sales, and respondents did not appeal that judgment.

[3] Initially-rejected shafts are identified by a white paint mark. T.866, 1933. That mark was present on the left rear axle shaft of respondents' vehicle. T.941.

for internal defects. T.869-70. Although axle shafts were routinely subjected to ultrasound analysis, retoccoed shafts were not, because the ultrasound machine rejected them 100 per cent of the time. *Id.*

Respondents also introduced the testimony of an expert metallurgist, Dr. Edward Cox, who had conducted an extensive metallurgical examination of the subject axle shaft and various other vehicle components. T.900-01. Dr. Cox found "prolific quench cracking" throughout the area of the fracture. T.964-69. Microscopic examinations of the axle revealed that a number of quench cracks in the bearing surface had been worn smooth, indicating that the roller bearings had continued to roll over the cracks for a substantial period of time. The wear on these cracks demonstrated that they occurred prior to the failure of the axle shaft. T.972-80; R.E.3. In addition, Dr. Cox found the intergranular nature of the fracture to indicate that the axle was in an "embrittled" condition when it left the Buffalo Axle Plant. T.951.[4] In his opinion, the combination of the prolific quench cracking and embrittlement of the shaft caused the axle shaft to fail during normal operation. T.945.[5]

Respondents also presented substantial evidence regarding the accident itself. For example, Margaret Davidson

---

[4] "Embrittlement" and "quench cracking" result from improper induction, quenching or tempering of the axle shaft. T.1871. Evidence at trial showed that petitioner did not control or monitor the temperatures inside the "tocco" machine, T.862, and had no system for controlling the temperature of the water used for quenching. T.862.

[5] Although petitioner contended that the accident had caused the axle to break, *see* page 5 *infra*, Dr. Cox noted that there was no appreciable damage to the left side of the vehicle, the side on which the broken axle was situated. T.927. He stated that, if the impact of the vehicle on the pavement had caused the left rear axle to break, it would be natural to expect that the damage to that side of the vehicle would have been far more extensive.

—who saw much of the accident firsthand—and Jack Davidson—who arrived at the scene shortly thereafter—testified to the presence of "chop marks" in the roadway. T.584-85, 604-05, 609. These marks, made by "metal" against the pavement, T.610, supported the notion that the left rear axle had already broken, driving the left rear wheel beneath the vehicle. The Davidsons specifically said that these marks were "indentations in the blacktop," T.609, not (as petitioner claimed) "tire marks." The Davidsons further testified that they had walked up and down the roadway and had seen no evidence to support the theory (advanced by petitioner) that Mrs. Jackson had run off the roadway onto the shoulder prior to the accident. T.585, 603-04. Officer Donald Brown of the Mississippi Highway Patrol—who arrived 10 to 15 minutes after the accident—likewise stated that he saw no evidence of the vehicle having run off the roadway onto the shoulder before the accident occurred. T.623.[6]

The testimony of Lanny Rhoades, an expert accident reconstructionalist called by respondents, specifically identified the broken axle as the cause of the accident. Mr. Rhoades testified that, after the axle broke, the vehicle (which was traveling near the center line of the roadway) tilted to the left while the wheel and tire folded under the vehicle. T.758. In his testimony, Mr. Rhoades matched each mark found on the tire and rim to various components of the underside of the vehicle. T.753-63. He explained that the wheel, caught under the vehicle, had "chattered" down the roadway, face down, causing the "chop marks" in the road. T.765-66.[7]

---

[6] Officer Brown testified that Linda Jackson had told him, immediately following the accident, that the "axle broke," causing the tire to come off of the vehicle. T.622.

[7] As Mr. Rhoades noted, an examination of the left rear wheel showed that there was asphalt caught between the rim and the tire. T.765-66; Pl. Ex. 4. The reason was that the "chatter[ing]" of the wheel along the road surface had caused the lip of the rim

Petitioner offered its own version of these events. As set forth more fully in its petition to this Court, *see* Pet. 5-6, petitioner contended that the axle had broken as a result of the accident rather than beforehand. In its view, Linda Jackson had run off the right side of the road and, by overcorrecting for this action, had lost control of the vehicle. T.1467. It suggested that the "chop marks" identified by respondents' witnesses were instead "tire marks" and argued that the tire marks, as a whole, demonstrated that the axle was still intact during the skid. Pet. 5.

The jury found for respondents. Pet. App. B-2. As compensatory damages it awarded $5,000,000 to Amanda Jackson, $2,000,000 to Linda Jackson, and $150,000 to Terry Jackson. Pet. App. B-2. The court subsequently granted summary judgment to petitioner on the issue of punitive damages. Petitioner filed a motion for judgment notwithstanding the verdict, or for a new trial, which was denied.

Petitioner then took an appeal to the Mississippi Supreme Court. In its briefs, it put forward numerous grounds that, it argued, required reversal of the judgment, including that the evidence was insufficient to support the judgment as a matter of state law. It did not contend, however, that the judgment violated the federal due process clause or any other provision of federal law. A panel of the Mississippi Supreme Court affirmed the judgment without opinion. Pet. App. A-1 to A-2.

Petitioner next sought rehearing *en banc*. Its petition again made no contention that the judgment—or the review of that judgment—violated due process or any provision of federal law. Its principal argument was that, under "established precedent" of *state* law, the Court was required to order a new trial when "the verdict contra-

---

to fold back and packed the asphalt between the rim and the tire. *Id.*

dicts the physical evidence." Petition for Rehearing en Banc at 3. Its other arguments—including claims of prejudicial evidentiary rulings and prejudicial comments by the trial judge—likewise rested upon state law.

The Mississippi Supreme Court ultimately denied the petition for rehearing *en banc*, but it issued an opinion to explain the denial and to address several of the numerous arguments advanced by petitioner. Pet. App. D-1 to D-14. Noting that petitioner had made a number of attacks on the judgment—including that "the jury verdict and damages are against the weight of the evidence" —the Court said that it had "carefully reviewed the twenty-four volume record and accompanying exhibits" and had found the "assignments of error [to be] without merit." Pet. App. D-7 to D-8. The Court observed: "As with any lengthy trial, this may not have been a perfect trial. However, it was a fair trial." Pet. App. D-8. The Court then specifically rejected two contentions made by petitioner: that the trial court improperly excluded evidence of an expert previously retained by respondents and that the award of compensatory damages was excessive. Pet. App. D-8 to D-13.[8]

Three members of the Court dissented. Chief Justice Hawkins, having stated his view that "the physical facts completely belie Jacksons' version" of the accident, Pet. App. D-14, devoted the remainder of his opinion to various trial errors alleged by petitioner. Pet. App. D-15 to D-47. Justice Smith, joined by Chief Justice Hawkins and Justice Prather, dissented on the ground that "the verdict is against the overwhelming weight of the evidence" and that a new trial thus was required. He stated

---

[8] With respect to the first issue, the Court held that the prejudice of allowing the testimony would outweigh any benefit. Pet. App. D-11 to D-12. With respect to the second issue, the Court found that the award of damages was not unreasonable, "[c]onsidering the profound and permanent nature of the injuries sustained; pain, suffering, and the loss of enjoyment of life; and the costs of care and rehabilitation . . . ." Pet. App. D-12 to D-13.

that, as he viewed the evidence, "the axle fracture was not the *cause* of the GMC Jimmy's going out of control and rolling over three times. Instead, it was simply one of many damages to the vehicle *resulting* from the vehicle's rollover." Pet. App. D-66 to D-67.

Justice Banks, writing for four members of the six-person majority, responded to what he termed the "vigorous dissents." Pet. App. D-56. Addressing Justice Smith's argument about the weight of the evidence, Justice Banks said that neither of the "competing explanations" was "completely consistent with the physical evidence found at the scene." Pet. App. D-56 to D-57. He emphasized, however, that, in addition to such evidence, there was evidence about defects in the left rear axle—which concededly had broken—at the time of manufacture. Pet. App. D-57. In light of this evidence, and the lack of any evidence "of improper driving or other cause of the upset," he concluded that "a reasonable fair-minded jury could conclude that the axle broke before the flip and contributed to the accident and no bias, prejudice or passion is manifested thereby." Pet. App. D-57.

ARGUMENT

The decision in this case does not merit further review. Although petitioner states that "due process requires a state court judgment to be supported by evidence," Pet. 14, and contends that the decision below is in conflict with cases so holding, petitioner did not argue below that due process required reversal of the judgment but only that state law did so. (Indeed, it does not even appear that this issue is fairly encompassed in the Question Presented to this Court.) Furthermore, Mississippi law itself provides for reversal of judgments without a sufficient evidentiary basis, and petitioner does not contend that the due process clause requires any more. Its real complaint, therefore, is simply that the courts below did not properly apply the state-law standard in this case: that

is, that they did not provide "meaningful judicial review." But, even if this argument has been properly raised—and we think it, too, has not—it is a classic example of an issue of no general importance, not warranting the attention of this Court. And, in fact, the Court below did provide adequate review of the judgment, concluding on the record before it that a reasonable jury could find petitioner liable for the accident in this case.

1. Petitioner purports to find a conflict between the decision below and decisions of this Court holding, as a matter of federal due process, that judgments must be supported by sufficient evidence. But petitioner did not press any such argument in the courts below. Its only argument with respect to the sufficiency of the evidence was that the evidence was inadequate to sustain the judgment under principles of *state* law. Nowhere in that argument did petitioner contend that the judgment violated federal due process, nor did it rely on any of the cases that it now cites to show a conflict with decisions of this Court. Petitioner thus cannot raise the issue in this Court. 28 U.S.C. § 1257; S. Ct. R. 14.1(h); R. Stern, E. Gressman, S. Shapiro, & K. Geller, *Supreme Court Practice*, § 3.17 (7th ed. 1993). Moreover, the Question Presented in this Court does not fairly encompass an argument that the judgment violated due process on the grounds of lack of evidentiary support alone.[9]

It is also clear that this issue, had it been timely raised, would not merit review by this Court. The Mississippi courts, as one might expect, have not subscribed to a doctrine that judgments may be imposed without any basis in the evidence. To the contrary, although the Mississippi Supreme Court (like any appellate court) gives considerable weight to determinations of the initial factfinder, it recognizes that, if the facts so strongly favor

---

[9] The Question Presented (pet. i) speaks only to the nature of judicial review, not to the substantive standard to be applied on review.

the losing party that reasonable jurors could not find otherwise, the judgment must be reversed. *See, e.g., Fitzner Pontiac-Buick-Cadillac, Inc. v. Smith*, 523 So. 2d 324 (Miss. 1988); *Wilmoth v. Peaster Tractor Co.*, 544 So. 2d 1384 (Miss. 1989); *Jones v. Shaffer*, 573 So. 2d 740 (Miss. 1990). Petitioner does not suggest—and its cited cases do not indicate—that due process imposes a more exacting standard. The conflict posited by petitioner, therefore, simply does not exist.

2. The real complaint put forward by petitioner is that the Mississippi courts did not give "meaningful review" to its claims about the sufficiency of the evidence. Petitioner admits that it did not raise this argument in the state courts either, Pet. 12 n.7, but seeks to justify that failure on the ground that it could not have done so until the opinions on rehearing *en banc* had been handed down. This explanation makes little sense. There is no reason that petitioner could not have informed the Mississippi Supreme Court on appeal that due process obliged it to afford "meaningful review"—at the same time, defining what it believed the content of that obligation to be—and it certainly could have contended in its petition for rehearing *en banc* that it had been denied due process by a lack of "meaningful review" to that point. At each step, however, petitioner relied solely upon principles of state law. Once again, therefore, it has failed to satisfy the jurisdictional requirement that a federal issue be properly raised in state courts. *See* Stern & Gressman, et al., § 3.17(c), at 127-29.

Timeliness aside, moreover, this issue—whether the courts below engaged in "meaningful" judicial review—does not warrant the attention of this Court. As with its first issue, *see* page 8 *supra*, petitioner cannot credibly maintain that the Mississippi courts have an announced policy against "meaningful review," and so it can do no more than insist that the state courts did not

provide "meaningful review" *in this case*.[10] But it is well-established that this Court "do[es] not grant a certiorari to review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1925); *NLRB v. Hendricks County Rural Elec. Corp.*, 454 U.S. 170, 176 n.8 (1981). It would be even more out-of-place for this Court to grant review of the still narrower, fact-specific question whether a lower court actually undertook a review of the evidence, as it said it did, or merely engaged in "sham" review, as petitioner contends.

The reasons that this is so are self-evident. To begin with, unless there are grounds for believing that state courts are routinely neglecting their duties, the review of the scrutiny given by a single court in a single case is unlikely to produce a decision of any general importance. Furthermore, it would be highly burdensome for this Court to evaluate the review given by state courts in individual cases to determine if it was meaningful. Petitioner itself declares that this case is simply one of "tens of thousands of [civil damage] cases that occupy much of the time of state courts across the nation." Pet. 13. Although petitioner says that its case is singled out by "the brilliant clarity of the Mississippi Supreme Court's cynical refusal to do its job," Pet. 13, this allegation is hardly novel: the same sort of accusation could be made by many disappointed litigants faced with affirmance of an adverse judgment on appeal. It would seem impossible to sift through these claims in any rational fashion without assessing the level of evidentiary support on a case-by-case basis.

It is also unclear, and petitioner does not explain, what standards are to apply to this inquiry: that is, how a

---

[10] This case is thus very different from *Honda Motor Co., Ltd. v. Oberg*, 114 S. Ct. 2331 (1994), on which petitioner seeks to rely. As the Court noted in *Honda Motor*, "if the defendant's only basis for relief is the *amount* of punitive damages the jury awarded, Oregon provides no procedure for reducing or setting aside that award." *Id.* at 2338.

court is to distinguish "meaningful review" from "sham" review. For example, does "meaningful review" require that state courts (or federal courts) write an opinion in every case? If so, must they explicitly address every issue raised on appeal and, again, if so, how extensive must the discussion of each issue be? State and federal courts (including the Mississippi courts) commonly establish policies to address these questions. But it would be a very different matter to impose a given set of practices as a matter of federal constitutional law, to be monitored on a continuing basis by this Court.

Finally, and as a complete answer to its claim, petitioner *did* get meaningful review in this case, although it concededly did not get the result that it desired. The majority of the Mississippi Supreme Court *en banc*, having noted the contention that the verdict was against the weight of the evidence, expressly stated that it had "carefully reviewed the twenty-four volume record and accompanying exhibits," and concluded that the assignments of error (including the claim about the sufficiency of the evidence) were meritless. Pet. App. D-7 to D-8. Three Justices of the Court thought that the claim of insufficient evidence did have merit—setting out their reasons for thinking so at considerable length—and four Justices in the majority responded to that position, indicating their reasons for disagreement. This amount of time and attention, by itself, belies any charge that the judgment was not subject to genuine scrutiny.[11]

Petitioner nonetheless argues that its theory of the accident is the only possible explanation, and that the failure to accept it demonstrates the lack of serious review.

---

[11] Although petitioner argues that the judgment reflects antipathy towards "big businesses, particularly those without strong local presences," Pet. 24 (quoting *Honda Motor Co.*, 114 S. Ct. at 2341), petitioner is, in fact, "one of the top five private employers in the State of Mississippi." Motion of the Mississippi Manufacturers Association for Leave to File Amicus Curiae Brief at 2 (Miss. Sup. Ct.).

But, to make this argument, petitioner unsurprisingly neglects evidence unfavorable to its hypothesis. Thus, petitioner gives short shrift to expert testimony indicating that the left rear axle shaft was defective upon leaving the factory and weakened from normal use, as well as evidence that the left side of the vehicle did not sustain damage consistent with the theory that the rollover caused the left rear axle to break. It argues that Linda Jackson prompted the accident by driving off the right shoulder of the road (leading to an overcorrection), despite the evidence of three witnesses at the scene that nothing on the side of the road supported that theory.[12] And it has no explanation for the "chop marks" in the roadway, arguing instead that, contrary to the testimony of witnesses at the scene, they were simply "tire marks."

It was thus entirely permissible for a jury, considering *all* the evidence, to conclude that the defective left rear axle had broken and caused the vehicle to go out of control. Respondents' expert testified that this explanation was consistent with the markings on the left rear tire and rim—caused by the folding of the wheel beneath the vehicle—and was further consistent with the "chop marks" in the road. This detailed evidence, coupled with the evidence of witnesses at the scene and expert evidence regarding the preexisting cracks in the axle itself, is more than enough to support the verdict. Nothing in the due process clause requires that the alternative version offered by petitioner be accepted instead.

---

[12] Indeed, an expert called by petitioner, Dr. Jerry Chiddester, admitted that, if Linda Jackson had not driven off the road, then his explanation of the accident was incorrect. T. 1656.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Of Counsel:
HICKMAN, RAYBURN, GOZA & GORE
Attorneys at Law
Post Office Drawer 668
Oxford, MS 38655
(601) 234-4000

DAVID D. O'DONNELL
S. T. RAYBURN
S. DUKE GOZA
H. SCOT SPRAGINS
Post Office Drawer 668
Oxford, MS 38655

DAVID G. HILL *
MAURIE L. WHITE
LAW OFFICE OF DAVID G. HILL
Post Office Box 429
Oxford, MS 38655
(601) 234-4315

J. MAX KILPATRICK
Post Office Drawer 520
Philadelphia, MS 39350

* Counsel of Record

Date: September 21, 1994